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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Bell Operating Company
Provision of Out-of-Region
Interstate, Interexchange Services

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CC Docket No. 96-21

DOCKET FILE COPY ORIGINAL

COMMENTS OF U S WEST, INC.

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March 13, 1996

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SUMMARY

In these comments, U S WEST, Inc. ("U S WEST") observes that the proposed out-of-region interstate, interexchange services separate subsidiary requirement for divested Bell Operating Companies ("BOC") as a precondition to non-dominant carrier status proposed in the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking is unnecessary and inconsistent with any rational view of market dominance. U S WEST's out-of-region operation will commence without either market share or brand-name recognition. It will clearly be non-dominant under any reasonable test. A separate subsidiary requirement for BOC out-of-region interLATA activities would be unnecessary and illogical.

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COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") hereby files these comments on the Notice of Proposed Rulemaking in the above-captioned docket.¹

In the Notice, the Federal Communications Commission ("Commission") proposes to treat "out-of-region" interstate, interexchange services offered by divested Bell Operating Companies (or "BOC") as offered by a "dominant carrier" unless those services are offered via a separate subsidiary which maintains separate books, owns its own switching and transmission facilities, and purchases services from BOC exchange carriers pursuant to tariff.² As the rules pertaining to dominant carriers are exceptionally onerous in a competitive market, the assumption is that all BOCs will choose a separate subsidiary operation for their newly offered interLATA services.

¹ In the Matter of Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, CC Docket No. 96-21, Notice of Proposed Rulemaking, FCC 96-59, rel. Feb. 14, 1996 ("Notice").

² Id. ¶ 13.

The newly enacted Telecommunications Act of 1996 (or “Act”) expressly permits BOCs to provide “out-of-region” interLATA services³ -- something new, as the Modification of Final Judgment had prohibited all BOC interLATA offerings.⁴ In essence, BOCs are prohibited from offering interLATA services which originate in their service territories, as defined in the Act, until after a competitive checklist has been met.⁵ BOCs may, however, provide out-of-region interLATA services immediately. The Act explicitly does not require separate subsidiaries for such activities.⁶ In addition, BOCs can provide “incidental” interLATA services which originate in their service regions.⁷ Only one subset of these activities -- information storage and retrieval -- must be offered via a fully separate subsidiary under the Act.⁸ The Notice proposes to impose (as a practical matter) separate subsidiary

³ Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56, 86 § 271(b)(2). “A Bell operating company, or any affiliate of that Bell operating company, may provide interLATA services originating outside its in-region States after the date of enactment of the Telecommunications Act of 1996[.]” (Emphasis added.)

⁴ United States v. American Tel. and Tel. Co., 552 F. Supp. 131, 188-89 (D.D.C. 1982), aff’d, sub nom., Maryland v. United States, 460 U.S. 1001 (1983).

⁵ BOCs must meet the requirements of the “competitive checklist” (Act at Stat. 88-89 § 271(c)(2)(B)) in order to “provide interLATA services originating in any of its in-region States[.]” Id. at Stat. 86 § 271(b)(1).

⁶ Id. at Stat. 86 § 271(b)(1). “A Bell operating company, or any affiliate of that Bell operating company, may provide interLATA services originating in any of its in-region States . . . if the Commission approves the application of such company for such State under subsection (d)(3).” (Emphasis added.)

⁷ Id. at Stat. 86 § 271(b)(3). “A Bell operating company, or any affiliate of a Bell operating company, may provide incidental interLATA services . . . originating in any State after the date of enactment of the Telecommunications Act of 1996.” (Emphasis added.)

⁸ Id. at Stat. 92 § 272(a)(2). “The services for which a separate affiliate is required by paragraph (1) are: (C) InterLATA information services, other than electronic publishing . . . and alarm monitoring services.”

requirements on BOC out-of-region interLATA activities (but not, presumably, on incidental in-region activities). The theory espoused in the Notice is that independent local exchange carriers ("LEC") who offer interstate, interexchange services are classified as "non-dominant" but must utilize an affiliate in order to offer the services.⁹ Thus, reasons the Notice, separate subsidiaries might be appropriate (at least on an interim basis) for BOC out-of-region interLATA activities as well.¹⁰

With all due respect, the concept set forth in the Notice is not a reasoned approach to implementing the new statute. Dominant carriers are defined as those carriers with market power -- those having the ability to increase profits by raising prices or restricting output.¹¹ Now that AT&T Corp. ("AT&T") has been declared to be "non-dominant" with a market share in excess of 50%, there are no "dominant" interLATA carriers.¹² The notion that U S WEST, a company without any market share at all in the out-of-region interLATA business, might somehow be able to exercise dominance in a market occupied by such "non-dominant" players as AT&T is simply not credible. No matter what else comes out of this docket, labeling the giant AT&T as non-dominant while at the same time defining companies with no

⁹ Notice ¶ 10.

¹⁰ Id. ¶ 11.

¹¹ See In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report and Order, 85 FCC 2d 1, 20-21 ¶¶55-56 (1980).

¹² AT&T was recently granted "non-dominant" status in this very market despite a market share well in excess of 50%. See In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, FCC 95-427, rel. Oct. 23, 1995.

market share as dominant, would simply not be defensible as an exercise in reasoned decision making. BOCs have no market share in the out-of-region interLATA market, no brand-name identification, and no other power of any sort which would ipso facto enable the BOCs to compete at all against “non-dominant” providers such as AT&T, far less to unfairly disrupt their markets.

The Notice suggests that it might be possible to justify incorporation of separate subsidiary requirements on BOCs on a theory based on something other than market power. However, in the absence of the insupportable determination of “dominance,” upon which the Notice is premised, there is no conceivable justification for imposing a separate subsidiary requirement. The Act certainly did not contemplate such a requirement, and Congress was not bashful about imposing its own statutory subsidiary rules in other areas.¹³ The likelihood of U S WEST offering to itself discriminatory access for terminating interLATA services is extremely remote, and accounting safeguards are more than adequate to protect against whatever speculation still exists about cross-subsidization. Once BOCs have had an opportunity to negotiate appropriate interconnection agreements and to commence larger-scale interLATA operations, it may be time to examine how BOC interLATA services have actually developed and matured, although historically, separate subsidiary rules have proven to be uniformly negative, and

¹³ Act at Stat. 92-93 § 272.

U S WEST doubts that their expansion by the Commission could ever be warranted.

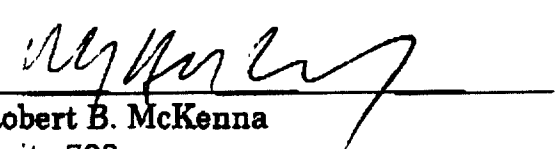
Here, however, there is no evidence and no record, only speculation.¹⁴

The Commission should simply terminate this docket and permit BOC interLATA services to develop within the context of the marketplace and the Act. There are obviously numerous issues of far greater importance to the public than whether BOC interLATA services offered from outside their traditional LEC serving areas need to be offered via a subsidiary.

Respectfully submitted,

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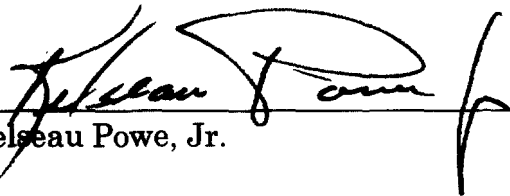
Of Counsel,
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¹⁴ The Notice observes (indeed finds well nigh dispositive) that independent LECs now utilize separate subsidiaries for their interexchange services. Notice ¶ 13. This unnecessary regulation would seem a good candidate for immediate elimination, and there certainly is no reason to expand it to BOCs.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 13th day of March, 1996, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served via hand-delivery upon the persons listed on the attached service list.


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